

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARY Jewelers, LLC,

Plaintiff,

V.

IBJTC Business Credit Corporation and David Molinario,

Defendants.

Civil Action No. 04-10281-EFH

**DEFENDANTS' MOTION TO STRIKE CERTAIN
MATERIAL FILED BY PLAINTIFF IN
OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants, IBJTC Business Credit Corporation (“IBJ”) and David Molinaro (collectively, “Defendants”) hereby move to strike certain material filed by Plaintiff ARY Jewelers, LLC (“ARY”) in opposition to Defendants’ motion for summary judgment. In support of this Motion, the defendants submit the accompanying Memorandum of Law in Support of Defendants’ Motion to Strike. As the memorandum demonstrates, the materials that are the subject of this motion would be inadmissible at trial and therefore may not be considered on defendants’ motion for summary judgment. Accordingly, the defendants respectfully request that the Court strike the following materials from ARY’s opposition and disregard them in its consideration of defendants’ summary judgment motion:

1. The Deposition Transcript of Thomas Morgan, dated May 21-22, 2001, attached as Exhibit 1 to the Affidavit of Barry Pickens, dated September 13, 2005;
2. Paragraph 4 of the Affidavit of Thomas Morgan, dated September 14, 2005;
3. The Affidavits of John A. Baerst and Thomas Bonville, dated September 13, 2005 and September 12, 2005, respectively;
4. The Affidavit of Ijaz-ul-Ahsan, dated September 8, 2005;
5. The Affidavit of Shirley Webster, dated, September 9, 2005; and
6. The Supplemental Affidavit of Barry Pickens, dated September 12, 2005.

IBJTC BUSINESS CREDIT CORPORATION and
DAVID MOLINARIO

By their attorneys,

/s/ Kate Cimini

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Dated: September 29, 2005

Local Rule 7.1(A)(2) Certification

I, Lee Gayer, attorney for the IBJTC Business Credit Corporation and David Molinario hereby certify that I have conferred with counsel for ARY Jewelers, LLC regarding the subject of the instant motion and we attempted in good faith to resolve or narrow the issues raised by the instant motion.

/s/ Lee Gayer _____

Lee Gayer

Certificate of Service

I hereby certify that on September 29, 2005, copies of the foregoing Motion to Strike and the Memorandum of Law in Support of Defendants' Motion to Strike were served on counsel for the plaintiff Stephen P. Carrigan, The Carrigan Law Firm, LLP, 1331 Lamar, Suite 1550, Houston, TX 77010 by E-Mail and Federal Express.

/s/ Kate Cimini
Kate Cimini